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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,249	05/03/2001	David F. Woodward	D2910	6273

33197 7590 06/05/2003

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EXAMINER

FAY, ZOHREH A

ART UNIT PAPER NUMBER

1614

DATE MAILED: 06/05/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/848,249

Applicant(s)

WOODWARD ET AL.

Examiner

Zohreh Fay

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,15-17 and 20-23 is/are rejected.
- 7) ☐ Claim(s) 18 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Claims 1, 2, 4, 5-13 and 15-23 are presented for examination.

Claims 1, 2, 4-6 and 14-17 are rejected under 35 U.S.C. 102 9b) as being anticipated by Neumann for the reasons set forth on page 2 of the office action of November 5, 2002.

Claims 1, 2, 5, 6, 9-13, 15-17 and 20-21 are rejected under 35 U.S.C. 102 (b) as being anticipated by DeSantis Jr. et al. for the reasons set forth on page 2 of the office action of November 5, 2002.

Claims 7, 8, 22 and 23 are rejected under 35 U.S.C. 103 as being unpatentable over WO 0044/355 for the reasons set forth on pages 2 and 3 of the office action of November 5, 2002.

Claims 18 and 19 are objected to as being dependent on a rejected claim.

Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Applicant alleges criticality to the formation of a complex by combining the claimed components. The allegation is not well taken. It is inherent that by mixing pharmaceutical components, there is an interaction at the level of ions between such components. There is no evidence of record to demonstrate that applicant combines the components in such manner, that is different from prior art, and such mixing results in a specific complex that is different from the prior art. Applicant also alleges criticality to the amounts of fatty acid used by the instant application. The allegation is not well taken, considering that the prior art teaches the fatty acid concentration within the range of the claimed invention. Applicant has presented no

evidence to establish the unexpected or unobvious nature of the claimed invention, and as such, the prior rejection sustains.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Fay whose telephone number is (703) 308-4604. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Application/Control Number: 09/848,249

Page 4

Art Unit: 1614

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Z.F  
June 3, 2003

ZOHREH FAY  
PRIMARY EXAMINER  
GROUP 1200

A handwritten signature in black ink, appearing to read 'Zohreh Fay', written over the printed name.